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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

Case Nos.

BK-S-06-10725-lbr

BK-S-06-10726-lbr

BK-S-06-10727-lbr

BK-S-06-10728-lbr

BK-S-06-10729-lbr

USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,
Debtor.

Jointly Administered
Chapter 11 Cases

USA CAPITAL FIRST TRUST DEED FUND,
LLC,
Debtor.

Date: May 18, 2009
Time: 9:30 a.m.
Place: Courtroom 1
Foley Federal Building
300 Las Vegas Blvd., South
Las Vegas, Nevada

USA SECURITIES, LLC,
Debtor.

Affects:

☐ All Debtors

☒ USA Commercial Mortgage Company

☐ USA Capital Realty Advisors, LLC

☐ USA Capital Diversified Trust Deed Fund, LLC

☐ USA Capital First Trust Deed Fund, LLC

☐ USA Securities, LLC

**REPLY OF TEMECULA PUBLIC FINANCE AUTHORITY TO THE *RESPONSE OF
THE TRUSTEE OF THE USACM LIQUIDATING TRUST* TO MOTION TO
DETERMINE (A) THAT THE AUTOMATIC STAY DOES NOT APPLY WITH
RESPECT TO CERTAIN PROPERTY OR, ALTERNATIVELY, (B) TO TERMINATE
THE AUTOMATIC STAY, AND IN FURTHER SUPPORT OF THE MOTION**

The TEMECULA PUBLIC FINANCING AUTHORITY (the "Authority"), by and
through its counsel, files this Reply to respond to the limited opposition of the Trustee (the

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1 “USACM Trustee”) of the USACM Liquidating Trust (the “Trust”), to the Authority’s *Motion to*
 2 *Determine that the Automatic Stay does not Apply to Certain Property or, Alternatively, to*
 3 *Terminate the Automatic Stay* under Sections 541, 362(d)(1) and (d)(2) of the United States
 4 Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rule 4001(a) of the
 5 Federal Rules of Bankruptcy Procedure, and Rule 4001(a) of the Local Bankruptcy Rules (the
 6 “Motion”), and in further support of the Motion.

7 Background for the Motion

8 The Authority filed this Motion, and a parallel motion for the same relief in the case of
 9 USA Investment Partners (“USAIP”), case number 07-11821-lbr, because each Trustee had
 10 claimed various equitable and other potential interests in the Temecula Property.¹ Yet, when we
 11 made conferral requests pursuant to Local Rule 4001 prior to the Motion, neither Trustee
 12 responded. Now, in his response² to the Motion, the USACM Trustee takes the position that the
 13 Motion is moot because it was filed post-confirmation. Notably, the USACM Trustee fails
 14 completely to address the first branch of the Motion (that the Temecula Property is not property
 15 of this estate).

16 The Motion should not be “waived away” simply because it was filed post-confirmation.
 17 In fact, when we made our request pursuant to Local Rule 4001 in early 2008, regarding the
 18 Authority’s then intention to seek the relief requested by the Motion,³ the USAIP Trustee
 19 indicated – and this was likewise post-confirmation – that she would oppose it.

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21
22
23 ¹ Any terms not defined in this Reply are defined in the Memorandum of Points and
 24 Authorities annexed to the Motion and filed April 8, 2009 (docket number 7015).

25 ² *Response By The USACM Liquidating Trust To the Motion Of Temecula Public Finance*
 26 *Authority To Determine That The Automatic Stay Does Not Apply With Respect To Certain*
 27 *Property Or, Alternative, To Terminate The Automatic Stay*, filed April 14, 2009 (“USACM
 28 Response”).

³ A third party ultimately paid the taxes then owed by Ashby USA on the Temecula Property,
 in or about May 2008, so the Motion became unnecessary.

THE MOTION IS NOT MOOT

The automatic stay does not apply to the Temecula Property because it is not property of the estate. See 11 U.S.C. § 541. The USACM Trustee does not refute this, nor does he claim that the Trust has any unresolved claims to Ashby USA's property (including the Temecula Property). Such a claim would in fact be surprising now, in view of the Trust's settlement with Ashby USA, its affiliates, and one of its principals, Richard Ashby (and other related entities), under Adversary Proceeding number 08-01123-lbr in this Court.

The Trust appears to be "hedging its bets" by failing to take a position at all on the issue of property of the estate, apparently saving its arguments for another day or forum. But that is not a proper response, and this issue should be resolved here and now. Only this Court can determine that the Temecula Property is not part of this estate, and this Court should do so. The Authority can then proceed against Ashby USA and the Temecula Property without the possibility of being required to make multiple applications to this Court or otherwise address multiple times the issue of estate property.

Accordingly, the Authority, which is owed over two million dollars in unpaid property taxes levied on the Temecula Property, seeks entry of an Order with a finding that the automatic stay does not apply to the Temecula Property, because it is not property of the estate.

Respectfully submitted this 11 day of May, 2009.

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By 

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CERTIFICATE OF SERVICE

1. On this 11th day of May, 2009, I served the following document(s) (specify):

REPLY OF TEMECULA PUBLIC FINANCE AUTHORITY TO THE RESPONSE OF
THE TRUSTEE OF THE USACM LIQUIDATING TRUST TO MOTION TO DETERMINE
THAT THE AUTOMATIC STAY DOES NOT APPLY WITH RESPECT TO CERTAIN
PROPERTY OR, ALTERNATIVELY, TO TERMINATE THE AUTOMATIC STAY, AND IN
FURTHER SUPPORT OF THE MOTION

2. I served the above-named document(s) by the following means to the persons as listed below:

(check all that apply)

☐ a. ECF System *(You must attach the "Notice of Electronic Filing", or list all persons and addresses and attach additional paper if necessary)*

☐ b. United States mail, postage fully prepaid
(List persons and addresses. Attach additional paper if necessary)

Ashby USA, LLC
Attn: Ms. Jeanne Deringer
470 East Harrison Street
Corona, CA 92879

Office of the U.S. Trustee
300 Las Vegas Blvd. South
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Las Vegas, NV 89101

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USA Commercial Mortgage, et al
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Las Vegas, NV 89121

Lenard F. Schwartzer
Schwartzer & McPherson
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Suite I
Las Vegas, NV 89 146-5308

- ☐ **c. Personal Service** (*List persons and addresses. Attach additional paper if necessary*)

I personally delivered the document(s) to the persons at these addresses:

☐ For a party represented by an attorney, delivery was made by handing the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

☐ For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

- ☐ **d. By direct email (as opposed to through the ECF System)**
(*List persons and email addresses. Attach additional paper if necessary*)

Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

- ☐ **e. By fax transmission**
(*List persons and fax numbers. Attach additional paper if necessary*)

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.


- ☐ **f. By messenger** (*List persons and addresses. Attach additional paper if necessary*)

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. (*A declaration by the messenger must be attached to this Certificate of Service*)

I declare under penalty of perjury that the foregoing is true and correct.

Signed on (date): 05-11-09

Irazema Garcia
(Name of Declarant)


(Signature of Declarant)